

STATE OF MICHIGAN
COURT OF APPEALS

In re R. E. BEACH, Minor.

UNPUBLISHED
September 22, 2015

No. 325962
Oakland Circuit Court
Family Division
LC No. 13-807487-NA

Before: MURRAY, P.J., and METER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to a minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

At the outset, although not contested by respondent,¹ we note that the three statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The conditions that led to the adjudication in this case continued to exist at the time of termination because respondent was still without suitable housing and not in a position to provide a stable home for the child. She lacked stable employment and had failed to meaningfully address her mental health issues. Based on respondent's lack of cooperation with the services offered to her, there was no evidence that the negative conditions could be rectified within a reasonable time so that she could provide proper care and custody for the child. Also, because of respondent's mental health issues, there was a reasonable likelihood that the child would have been harmed if returned to respondent's care.

Respondent first argues that the trial court erred in finding that petitioner made reasonable efforts to reunite her with her child. Generally, "petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). "Before the trial court enters an order of disposition, it is required to state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child to be removed from the home." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011).

¹ In fact, respondent pleaded no contest to the petition in which petitioner set forth the statutory grounds for termination and requested a hearing only with regard to the child's best interests.

The failure to make reasonable efforts to avoid the termination of parental rights may prevent the establishment of statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-70; 472 NW2d 38 (1991).

Respondent asserts that petitioner did not provide reasonable services to her. She contends that if she had received mental health services tailored to her specific needs (addressing domestic violence and sexual abuse) she could have established a solid mental health foundation from which she would have been able to comply with and benefit from the other components of her treatment plan. She argues that she was unable to secure or maintain employment and housing because she had not achieved mental health stability.

Respondent's claim is unsupported by the record. Respondent was indeed offered mental health services. She was given multiple referrals for individual and group therapy. Had respondent regularly participated in therapy, she would have had the opportunity to address all of the issues that contributed to her emotional instability, including the abuse she suffered as a child and domestic violence. The record shows that the caseworker made a new referral when respondent moved so that mental health services could be obtained in the area where she was living. Any potential delay in appropriate services was the result of respondent's failure to provide petitioner with a detailed mental health history. As soon as caseworker Alissa Curtis received respondent's records from Havenwyck Hospital in December 2013, she referred respondent for appropriate treatment. Curtis testified that respondent did not comply with the referrals for mental health services and did not complete the offered services. Moreover, respondent did not appear to be receptive to more therapy. She testified that she knew how to avoid violent relationships and she did not believe she would enter one again. Respondent does not point to anywhere in the record where she requested domestic violence therapy and there was no reason to believe that she would have participated in any additional therapeutic services because she failed to consistently participate in the therapy offered to her.²

Although petitioner "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Here, petitioner referred respondent to services addressing her mental health. Respondent failed to satisfy her "commensurate responsibility . . . to participate in the services that are offered," particularly group and individual therapy. Therefore, the trial court did not clearly err by finding that petitioner made reasonable efforts at reunification. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

Next, respondent argues that the trial court erred in its best-interests determination. "Once a statutory ground for termination has been proven, the trial court must find that

² The record also shows that the caseworker provided respondent with information on low income housing. Respondent herself knew that various homes where she was living were not suitable for the child.

termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error a trial court's finding that termination is in the child's best interests. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Respondent argues that she had a good record of visitation and appropriate interaction and bonding during supervised visits with her child. This claim is unsupported by the record. Respondent was inconsistent with visits and had not visited the child since July 2014.³ The record shows that over time the bond between respondent and the child weakened. Respondent's son never called respondent "mom," was at times not very affectionate with her, and did not appear to be sad when the visits ended. Further, although respondent had some parenting skills, she fell asleep during a visit and was sometimes unable to redirect the child or interact appropriately with him.

Respondent argues that consistent visitation that occurred earlier in the case and partial compliance with the treatment plan should have been enough for the trial court to conclude that she could rectify the conditions that brought the child into care. Further, she alleges that she was employed at the time of the best-interests hearing and had secured housing that was large enough for respondent, the minor child, and the new baby respondent was expecting. This argument is unpersuasive given that respondent had not maintained consistent employment and in fact was repeatedly fired from jobs over the course of the case. Likewise, respondent did not demonstrate the ability to maintain suitable housing. She lived with several different people while the child was in foster care and some had a felony record or history with Children's Protective Services. Respondent's claim that she was making gains regarding her mental health is also unsupported by the record because she was not participating in therapy and unable to take prescribed medication because of her pregnancy.

There was no evidence that with more time and more intensive treatment respondent could provide a stable and permanent environment for the child. She had not achieved mental health or emotional stability, having been brought to the hospital twice in late 2013 for mental health issues. Further, respondent's involvement in domestic violence⁴ was troublesome because she was often financially dependent on her partners. Respondent had shown an uncertain potential for success during the time she was provided services. In considering the best interests of the child, a court may consider the child's need for permanency. See *Trejo*, 462 Mich at 364. Based on a review of the record and respondent's inability to provide a proper, stable, permanent home environment for the child, the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interests.

³ The best-interests hearing took place in October and November of 2014. The court had continued visitation even after the statutory grounds plea in August 2014.

⁴ We note that a male friend with whom respondent was living broke respondent's nose in March 2014.

Finally, respondent argues that the child's foster parent took actions to undermine the goal of reunification, sabotage respondent's efforts to provide permanency and stability, and discourage the relationship between respondent and the child. Although the record shows that the foster parent expressed concern about respondent's ability to care for the child and pointed out her parenting deficiencies, the foster parent's communications had no impact on respondent's ability to participate in a treatment plan. Respondent admits that the caseworker repeatedly reminded the foster parent that the goal was reunification. The trial court properly found that, while the foster family overreached at times and was sometimes inappropriate, nothing in that relationship "colored [the] child's attitude" toward respondent. The bond between respondent and the child weakened because respondent visited inconsistently and refused a chance to visit more frequently during the case. Respondent's claim that the foster parent compromised her relationship with the child is without merit.

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Donald S. Owens